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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

RAFAEL ESTEBAN ORDAZ,

Defendant and Appellant.

F071359

(Fresno Super. Ct. No. F15900900)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. James Kelley, Judge.

James Bisnow, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Gomes, J., and Smith, J.

Appellant Rafael Esteban Ordaz pled no contest to possession of a weapon by an inmate (Pen. Code, § 4502, subd. (a))¹ and admitted allegations that he had a prior conviction within the meaning of the Three Strikes law (§ 667, subds. (b)-(i)). Following independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On September 13, 2014, while serving a prison term at Pleasant Valley State Prison, Ordaz was involved in an altercation with another inmate. Afterwards, he was found to be in possession of a sharp instrument.

On February 17, 2015, the district attorney filed a complaint charging Ordaz with assault by a state prisoner (count 1, § 4501) and possession of a weapon by an inmate (count 2, § 4502, subd. (a)) and alleging that he had a prior conviction within the meaning of the Three Strikes law.

On March 16, 2015, Ordaz pled no contest to the possession of a weapon by an inmate charge and admitted the Three Strikes allegation in exchange for the dismissal of the remaining count and a stipulated sentence of six years, the middle term of three years on the possession charge, doubled to six years because of Ordaz's prior strike conviction. After Ordaz waived a probation report and time for sentencing, the court sentenced him to the stipulated term of six years, consecutive to the term he was already serving when he committed the new offense.

Ordaz's appellate counsel has filed a brief which summarizes the facts, with citations to the record, raises no issues, and asks this court to independently review the record. (*People v. Wende, supra*, 25 Cal.3d 436.) However, in a document filed on August 14, 2015, Ordaz appears to contend that his prior strike conviction does not

¹ All further statutory references are to the Penal Code.

qualify as a strike. While not entirely clear, it seems Ordaz's present claim is that the strike prior he admitted in open court, section 246, subdivision (b) does not exist so it cannot be a strike.²

“[W]hen a defendant pleads guilty or no contest and is convicted without a trial, only limited issues are cognizable on appeal. A guilty plea admits every element of the charged offense and constitutes a conviction [citations], and consequently issues that concern the determination of guilt or innocence are not cognizable. [Citations.] Instead, appellate review is limited to issues that concern the ‘jurisdiction of the court or the legality of the proceedings, including the constitutional validity of the plea.’ ” (*In re Chavez* (2003) 30 Cal.4th 643, 649.) Moreover, these cognizable issues on appeal “ ... or other grounds going to the legality of the proceedings [may only be addressed] provided that a section 1237.5 probable cause certificate has been obtained [citation] (*People v. Arwood* (1985) 165 Cal.App.3d 167, 171).³ Ordaz claims his appeal is based upon the sentence or other matters that occurred after plea that do not affect its validity. Again he is incorrect. A challenge to a Three Strikes allegation admitted as part of a plea constitutes a challenge to the validity of the plea. (Cf. *Id.* at p. 172.) Since Ordaz's contention challenges the validity of his plea, it is not cognizable on appeal.

² Ordaz is incorrect, the change of plea transcript reflects he “... suffered a prior strike conviction, ... a serious or violent felony as set forth in ... the California Penal Code ... PC 246 subsection (a)(2).” Interestingly, this code section does not exist either, nor did it exist in 2002-2003.

³ Section 1237.5 provides in pertinent part: “No appeal shall be taken by the defendant from a judgment of conviction upon a plea of guilty or nolo contendere ... except where [¶] (a) The defendant has filed with the trial court a written statement ... showing reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings. [¶] (b) The trial court has executed and filed a certificate of probable cause for such appeal with the clerk of the court.”

Further, following an independent review of the record we find that no reasonably arguable factual or legal issues exist.

DISPOSITION

The judgment is affirmed.